Local No. 10, International Union of Elevator Constructors, AFL–CIO (Thyssen General Elevator Company) *and* National Elevator Industry, Inc. Case 5–CB–8986

November 22, 2002

DECISION AND ORDER

BY MEMBERS LIEBMAN, COWEN, AND BARTLETT

On November 20, 2000, Administrative Law Judge Richard A. Scully issued the attached decision. The Respondent filed exceptions, the General Counsel and the Charging Party filed briefs in opposition, and the Respondent filed a reply brief.

This case presents issues involving Section 8(b)(1)(B) of the Act, which proscribes union coercion of an employer in the selection of its representatives for the purpose of collective bargaining or the adjustment of grievances. The complaint alleges that the Respondent, International Union of Elevator Constructors (IUEC), Local No. 10, violated Section 8(b)(1)(B) by fining member Horace Stillman Jr., for characterizing another member as "nothing but trouble" and recommending that the member be removed from a jobsite supervised by Stillman.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified below in the "Amended Remedy" section.

The pertinent facts are not in dispute. Stillman has been a member of the Union for 30 years. For approximately 16 years, Thyssen Elevator (the Employer) employed Stillman as a mechanic-in-charge (MIC). From January 11 to July 30, 1999, Stillman worked as the MIC at a construction site in Wilkes-Barre, Pennsylvania, where Local 84 had jurisdiction. Stillman was the only daily supervisor at the jobsite, supervising four to eight employees.

The record shows—and, notably, our dissenting colleague agrees—that Stillman's daily responsibilities were such as to render him an 8(b)(1)(B) representative of the Employer. Specifically, Stillman's daily activities involved addressing and resolving numerous employee problems and complaints, including those pertaining to wage rates, expenses, work hours, length of breaks, poor work performance, and safety issues. Resolution of these issues necessarily involved interpretation of pertinent contract provisions. Stillman, as the Employer's only daily representative on the project, also resolved employee grievances, albeit at an informal level before such complaints became subject to the formal grievance procedure.

This case arises from a wage dispute concerning employee Joe Gibson. Gibson, who previously worked for the Employer at a Connecticut jobsite, arrived at the Wilkes-Barre project in February or March 1999. A dispute arose between Gibson and Stillman regarding Gibson's wage rate. Gibson contended that he had been promised a higher rate than the regular Local 84 contractual rate. Stillman recommended to Ken Gough, the project's construction superintendent, that the Employer pay Gibson the latter rate, and his recommendation was followed.

After determining Gibson's wage rate, Stillman noticed that Gibson continually complained about his pay and that his complaints significantly slowed and hampered his work. Consequently, Stillman addressed the matter in a conversation with Ken Gough. During that conversation, Stillman told Gough that Gibson was "nothing but trouble" and recommended Gibson's removal from the project. Gough followed this recommendation, and Gibson was terminated.[1] Stillman informed Local 84 Business Representative August Whymeyer about Gibson's termination.

Following Gibson's termination, Whymeyer filed internal union charges against Stillman. The charges accused Stillman of violating the IUEC constitution by "wronging another member" because he had told a superior at Thyssen that Gibson was "nothing but trouble" and had sought Gibson's removal from the job. At Stillman's request, a trial was held before the Respondent's trial board. The trial board found that Stillman had violated the constitution, imposed a $1900 fine, and lifted the suspension of the $1400 balance on another fine that had been imposed on Stillman for a past violation. Stillman appealed to the IUEC general executive board, which upheld the trial board's decision. The judge determined that the Respondent's disciplinary action against Stillman violated Section 8(b)(1)(B). We agree with the judge.

Section 8(b)(1)(B) provides that "[i]t shall be an unfair labor practice for a labor organization or its agents . . . to restrain or coerce . . . an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances." The conduct proscribed by Section 8(b)(1)(B) includes union discipline of a supervisor-member which may "adversely affect"

[1] There is no allegation that this termination was unlawful.

the manner in which the supervisor-member performs collective bargaining, grievance adjustment, or related activities on behalf of an employer. *San Francisco-Oakland Mailers' Local 18 (Northwest Publications)*, 172 NLRB 2173 (1968). However, Section 8(b)(1)(B) does not proscribe all union discipline of supervisor-members for their conduct when representing the interests of their employers. As explained in *Florida Power & Light Co. v. Electrical Workers IBEW Local 641*, "a union's discipline of one of its members who is a supervisory employee can constitute a violation of Section 8(b)(1)(B) only when that discipline may adversely affect the supervisor's conduct in performing the duties of, and acting in his capacity as, grievance adjuster or collective bargainer on behalf of the employer." 417 U.S. 790, 804–805 (1974). Thus, Section 8(b)(1)(B) prohibits union discipline of supervisor-members only when: (1) the supervisor-member being disciplined is a "representative[s] for the purposes of collective bargaining or the adjustment of grievances" and (2) the union's sanction may have a foreseeable adverse effect on the future performance of 8(b)(1)(B) activities by the supervisor-member.

In the case at hand, the judge found and our dissenting colleague agrees that Stillman was an 8(b)(1)(B) representative of the Employer. The remaining question is whether the Respondent's discipline had a foreseeable adverse effect on his future performance of 8(b)(1)(B) activities. For the reasons set forth below, we find that it did.

The record reflects that the Union's discipline of Stillman was inextricably intertwined with Stillman's denial of Gibson's wage claim. Specifically, after Stillman denied Gibson's request for a higher wage, Gibson continued to submit his timesheets at that rejected rate. Gibson then routinely stopped working in order to complain about Stillman's denial of the higher rate. Gibson said that "If I'm going to get half the pay, I'm going to do half the work." Thus, Stillman recommended Gibson's discharge because Gibson refused to accept the contractual wage rate, and his persistent determination to receive a higher rate significantly hampered his job performance.

As found by the judge, Stillman's denial of Gibson's wage claim constituted grievance adjustment within the meaning of Section 8(b)(1)(B). It also involved the related activity of contract interpretation. Stillman testified that the Local 84 collective-bargaining agreement with the Employer governed wage rates. Gibson claimed a higher rate than was provided for in the agreement. Stillman recommended that Gibson be paid the contractual rate.

Our dissenting colleague notes that the record fails to show that Gibson relied on a specific contractual provision in claiming the higher wage rate. From this she concludes that the resolution of his wage claim did not involve contract interpretation. We disagree. While Gibson may not have relied on a contractual provision in claiming a higher rate, Stillman necessarily interpreted and relied upon pertinent provisions in the Local 84 collective-bargaining agreement in denying Gibson's claim. As noted above, Stillman testified that the collective-bargaining agreement between the Employer and Local 84 determined the wage rate that Gibson was entitled to receive. He testified further, "I told [Gibson] that he agreed to take a Local 84 rate and that's what he would get paid." Further, even if Stillman was not interpreting the contract, he was at least denying Gibson's grievance concerning his wage claim.

Thus, Stillman was engaged in 8(b)(1)(B) duties when he denied Gibson's wage claim. And, as we have shown above, that denial was inextricably intertwined with Gibson's misconduct, the discharge of Gibson, and the Respondent's discipline of Stillman. In light of this causal connection, we find that Stillman would reasonably fear that denying similar grievances in the future would lead to the same causal chain of events, i.e., misconduct by the employee, punishment therefore, and resultant union discipline. If the Respondent's discipline were allowed to stand, Stillman might be induced to forgo adherence to the Employer's interpretation of the collective-bargaining agreement in response to grievances like Gibson's. For, by doing so, he would avoid employee disruptions, the need to discharge, and union discipline. Hence, the discipline had the foreseeable consequence of weakening Stillman's backbone vis-a-vis employee grievances.

Our dissenting colleague disagrees with the foregoing analysis. She contends that there is no causal connection between the denial of Gibson's grievance and the Respondent's discipline of Stillman. Contrary to our colleague, the record amply demonstrates that the two events are linked. Gibson revealed the connection when he remarked to his fellow employees, "If I'm going to get half the pay, I'm going to do half the work." Therefore, Respondent's discipline of Stillman did not merely follow chronologically his denial of Gibson's grievance, as characterized by our colleague. Rather, none of the steps in the chain of events, beginning with Gibson's misconduct and ending with the Union's discipline of Stillman, would have occurred *but for* Stillman's denial of Gibson's grievance. The conclusion is thus inescapable that the Respondent's discipline of Stillman and

Stillman's denial of Gibson's grievance are causally connected.[2]

In its exceptions, the Respondent contends that, inasmuch as its discipline of Stillman was directed at his recommendation to discharge Gibson and not at Stillman's denial of Gibson's wage claim, the discipline could not have a foreseeable adverse affect on Stillman's future performance of 8(b)(1)(B) duties. Relying on language in *NLRB v. Electrical Workers IBEW Local 340 (Royal Electric)*, the Respondent asserts that union discipline of a supervisor-member is unlawful only when the discipline is "directed at" the supervisor's performance of 8(b)(1)(B) activities.[3] In that case the Court considered whether a union's discipline of supervisors who have *never* performed covered functions for the employer may violate Section 8(b)(1)(B) because the supervisors are part of a reservoir of employees from which the employers could select future representatives to perform 8(b)(1)(B) duties. The Court rejected the "reservoir doctrine," holding that union discipline of a supervisor-member violates Section 8(b)(1)(B) only if the member is actually engaged in collective bargaining, grievance adjustment, or a closely related activity, such as contract interpretation. The Court reasoned that union discipline could not have a foreseeable adverse effect on a supervisor's future performance of covered functions if the performance of those functions is merely hypothetical.

However, the Court simply did not have before it the issue which we have before us now—whether union discipline of a supervisor-member who is actually engaged in collective bargaining, grievance adjustment, or a closely related activity on behalf of the employer can violate Section 8(b)(1)(B) even though the discipline is not "directed at" the supervisor-member's performance of those functions.[4] Accordingly, the Court's pronouncements on this issue are not binding judicial precedent. And, while we adhere carefully to the words of the Court, we cannot say that the quoted passage clearly indicates that the Court intended that union discipline of a supervisor-member can never violate Section 8(b)(1)(B) if the discipline is not "directed at" the supervisor-member's performance of 8(b)(1)(B) duties. For, as the Court has repeatedly stated, it is the foreseeable adverse effect of union discipline on a supervisor-member's future performance of covered functions on behalf of the employer that is the critical factor in determining whether the discipline violates Section 8(b)(1)(B).[5] In our view, the Respondent's discipline of Stillman, although not directed at his performance of covered functions, had a foreseeable adverse effect on his future performance of those functions.

Thus, as discussed above, Stillman was engaged in 8(b)(1)(B) duties when he denied Gibson's wage claim. And, as also discussed above, that denial was inextricably intertwined with Gibson's misconduct, the discharge of Gibson, and the Respondent's discipline of Stillman. If, as we have shown, these events were inextricably intertwined, Stillman would reasonably fear that adherence to the Employer's interpretation of the collective-bargaining agreement when faced with employee grievances like Gibson's would produce the same causal chain of events involved herein, i.e., misconduct by the employee, punishment therefore, and resultant union discipline. Therefore, we agree with the judge that the Respondent's discipline deprived the Employer of the uncoerced representation of its interests in dealing with the Union in collective bargaining, grievance adjustment, and related activities. Accordingly, the Respondent restrained and coerced the Employer in the selection of its representatives within the meaning of Section 8(b)(1)(B).

AMENDED REMEDY

The Respondent excepts to the judge's award of expenses to member Horace F. Stillman Jr., arguing that, because Stillman is a third-party witness, he is not entitled to such an award. We reject this contention, and we agree with the judge that an award to Stillman for expenses incurred in defending against the Respondent's disciplinary charge is proper. The instant case is distinguishable from *Operating Engineers Local 478 (Stone & Webster Engineering Corp.)*, 283 NLRB 734 (1987). In that case, the Board denied the General Counsel's request that the union be ordered to reimburse the 8(b)(1)(B) representative for expenses incurred during the Board proceeding concerning the 8(b)(1)(B) allegation. Here, we award expenses to Stillman for costs that he incurred in defending himself at the Union's disciplinary hearing. This award renders Stillman whole for any

[2] Accordingly, our colleague errs in stating that our approach has no limiting principle. In the absence of a clear causal connection between the Respondent's discipline and Stillman's performance of 8(b)(1)(B) functions, we would not find that the Respondent's discipline had a foreseeable adverse effect on Stillman's future performance of those functions.

[3] The Supreme Court does not use the words "directed at." See 481 U.S. 573, 582 (1987) ("an adverse effect on future Sec. 8(b)(1)(B) activities exists only when an employer representative is disciplined for behavior that occurs while he or she is engaged in Section 8(b)(1)(B) duties").

[4] For the purposes of the following analysis, we assume arguendo that the Union's discipline of Stillman was "directed at" his discharge of Gibson. However, as discussed above, we do not believe that the discharge can be separated from the denial of Gibson's wage claim.

[5] *Florida Power & Light*, supra at 804–805; *American Broadcasting Cos. v. Writers Guild West, Inc.*, 437 U.S. 411, 429 (1978); and *Royal Electric*, supra.

harm suffered in defending against the unlawful charges. In short, this award places Stillman in the place he would have been absent the Respondent's 8(b)(1)(B) violation.

The remedy also includes a reimbursement to Stillman of any part of the fine that he may have paid. When fining Stillman, the Respondent not only imposed a fine for the alleged violation, but it also lifted the suspension of another fine that Stillman previously had received for a past violation. The reimbursement to Stillman requires a return to the status quo that existed prior to the imposition of the latest fine, i.e., the other fine will return to its suspended status.

ORDER

The National Labor Relations Board orders that the Respondent, Local No. 10, International Union of Elevator Constructors, AFL–CIO, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 2(c) and reletter the subsequent paragraphs.

"(c) Return to suspended status the $1400 fine against Horace Stillman that had been unsuspended."

2. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. November 22, 2002

William B. Cowen, Member

Michael J. Bartlett, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER LIEBMAN, dissenting.

The Supreme Court has made it clear that a union does not violate Section 8(b)(1)(B) of the Act by fining a member for actions taken as a supervisor, as opposed to actions taken as one of the employer's "representatives for the purposes of collective bargaining or the adjustment of grievances" (in the words of the statute). See *NLRB v. Electrical Workers IBEW Local 340 (Royal Electric)*, 481 U.S. 573 (1987); *Florida Power & Light Co. v. Electrical Workers IBEW Local 641*, 417 U.S. 790 (1974). Here, the Union fined a supervisor-member for recommending that a fellow member be discharged. In my view, while the supervisor's conduct amounted to the exercise of supervisory authority under Section 2(11) of the Act, it fell outside the much narrower scope of Section 8(b)(1)(B). The majority's decision, which finds a violation, represents the sort of expansive application of Section 8(b)(1)(B) that the courts have rightly criticized. See, e.g., *NLRB v. Sheet Metal Workers Local 104*, 64 F.3d 465, 467–470 (9th Cir. 1995).

Factual Background

The facts in this case are not in serious dispute. Horace Stillman has been a member of the Union for 30 years, and for the last 16 years he also worked as a foreman for the Employer, most recently as a foreman at the Employer's Veteran's Administration hospital jobsite in Wilkes-Barre, Pennsylvania. As further detailed in the judge's decision, Stillman had sufficient range of responsibilities while serving as foreman to be both a statutory supervisor and an 8(b)(1)(B) representative. However, the majority errs in finding that the internal union discipline at issue had anything to do with Stillman's exercise of these 8(b)(1)(B) responsibilities.

The case turns on Stillman's recommendation to Construction Superintendent Ken Gough, that mechanic Joe Gibson, a union member, be removed from the Wilkes-Barre project. Gibson had been transferred from a jobsite in Connecticut, and he came to the Wilkes-Barre project claiming that he had been promised a higher wage rate than what was being earned by other employees covered by the local agreement with Elevator Constructors Local 84, which applied to the Wilkes-Barre project. The record does not clarify who purportedly promised Gibson the higher wage rate, or on what basis Gibson thought he was owed the higher rate. Stillman refused to give Gibson more than the Local 84 wage rate, and his recommendation to ignore Gibson's request for a higher rate was upheld by Construction Superintendent Gough. There is no indication that Local 84 took any position on Gibson's wage claim, or even was aware of it.

Gibson continued to complain about his wage rate being too low, and Stillman observed that his pace of work was less than that of his fellow employees. The judge found that "Gibson constantly complained about his wage rate to the extent that he was disruptive and his low production was adversely affecting work on the project." Stillman tried to get Gibson to stop complaining and to do his work, but was unsuccessful. Stillman then told Gough that Gibson "was nothing but trouble" and recommended that he be taken off the Wilkes-Barre project. Gibson was laid off, after being at the Wilkes-Barre project for 2 weeks.

Local 84 Business Representative August Whymeyer brought internal union charges against Stillman, which ultimately were considered by the Respondent, Elevator Constructors Local 10, Supervisor Stillman's home Local. As clarified at the internal disciplinary hearing, the allegations considered by that panel were that Stillman had informed Gough that Gibson "was nothing but trou-

ble and to get him off the job." Stillman admitted at the disciplinary hearing that he had recommended to Gough that Gibson be removed from the job both because of his wage complaints and because of his slow production. Stillman clarified that Gibson not only worked slowly, but that he also would stop working, and that he would interfere with the work of his coworkers when he would complain that he was owed more than the Local 84 wages. One witness, presented by Whymeyer, testified that Gibson had remarked, "If I'm going to get half the pay, I'm going to do half the work." Following the hearing, Respondent Local 10 imposed internal union discipline on Stillman on the basis that he had violated the Union's constitution by harming a fellow union member. The Respondent imposed fines on Stillman, which were upheld on appeal to the International Union.

Analysis

The basic principles that control this case are straightforward: As the Supreme Court has held, "a union's discipline of one of its members who is a supervisory employee can constitute a violation of Section 8(b)(1)(B) only when that discipline may adversely affect the supervisor's conduct in performing the duties of, and acting in his capacity as, grievance adjuster or collective bargainer on behalf of the employer." *Florida Power*, supra, 417 U.S. at 804–805. In turn, a union may discipline a supervisor-member for "acts or omissions that occur while the supervisor-member is engaged in supervisory activities *other than* Section 8(b)(1)(B) activities." *Royal Electric*, supra, 481 U.S. at 585 fn. 8 (emphasis in original). Finally, in defining the scope of 8(b)(1)(B) activities, the Board has held that the statutory reference to "collective bargaining" includes the function of contract interpretation[1] and that the reference to "adjustment of grievances" includes the informal adjustment of disputes before they reach a formalized grievance process.[2]

Here, the judge concluded, and my colleagues agree, that the Respondent's actions taken against Stillman "arose from and were inextricably intertwined" with his actions while acting as an 8(b)(1)(B) representative in three respects. I disagree on each point.

First, the judge mistakenly characterized Stillman's actions as amounting to contract interpretation (and thus collective bargaining). The judge found that "Stillman first determined that Gibson was not entitled to the wage rate he was claiming under a provision of the Standard Agreement." As a factual matter, however, the record fails to show that Gibson relied on a contractual provision in seeking the higher wage rate. The standard agreement made part of the record is silent on specific wage rates, which apparently were addressed by the various local agreements negotiated with local unions, but which were not entered into evidence. The standard agreement also contains no provision regarding workers in one geographic area being covered by wage rates negotiated for another geographic area. At no time did the Respondent Union, or Local 84, ever provide any support for Gibson's claim that he was owed a higher rate for working at the Wilkes-Barre, Pennsylvania jobsite. On the present record, the wage dispute initiated by Gibson has been shown to be no more than an individual's personal complaint, based on some private expectation, and not one that had anything to do with contract interpretation. The majority contends that Stillman engaged in contract interpretation because he refused to apply the contract beyond its terms. But while Stillman may have acted consistent with the agreement, there is no evidence that he relied on it, much less that he interpreted it—and, of course, no evidence that Gibson or the Union ever disputed Stillman's action by invoking the agreement.

Second, the judge found that Stillman was involved in the disposition of Gibson's informal grievance concerning his wage rate. Although I agree that under Board precedent, Stillman's denial of Gibson's initial request to receive higher wages arguably can be characterized as a form of grievance adjustment, the actual disposition of Gibson's complaint has no direct bearing on why Stillman was disciplined by the Respondent Union. The Union charged Stillman not with denying Gibson's informal wage complaint, but with discharging him. And the reason for Stillman's recommendation that Gibson be discharged was not Gibson's substantive claim that he should be paid more than his fellow employees were paid. Rather, it was Gibson's insufficient productivity and his disruptive behavior based on his constant complaints to his colleagues. The judge erred in finding that the union fines were "designed to and were likely to compel [Stillman] . . . to accept [the Union's] position with respect to grievances." In fact, Local 84 and Respondent Local 10 never took a position on Gibson's individual wage complaint. Accordingly, there is no basis for finding Stillman's grievance adjustment responsibilities under Section 8(b)(1)(B) were likely to have been adversely affected.

[1] See *San Francisco-Oakland Mailers' Union No. 18 (Northwest Publications)*, 172 NLRB 2173 (1968). The Supreme Court has characterized this doctrine as being at best "within the outer limits" of the coverage of this statutory provision. *Royal Electric*, supra, 481 U.S. at 584, quoting *Florida Power*, supra, 417 U.S. at 805.

[2] See *Sheet Metal Workers Local 68 (DeMoss Co.)*, 298 NLRB 1000, 1003 (1990). But cf. *Royal Electric*, supra, 481 U.S. at 589 fn. 12 (casting doubt on, but not passing on, consistency between "Board's broad definition of grievance—and hence of 'grievance adjustment'" and "narrow purpose and scope of § 8(b)(1)(B)."

The majority argues that because Gibson's poor job performance apparently was caused by his dissatisfaction with his wages, Stillman's denial of Gibson's request for higher wages was "inextricably intertwined" with Gibson's discharge. But this argument simply does not follow. There is no evidence that the Union's discipline was directed at Stillman's denial of the wage claim. The Union never endorsed the claim, and there is no apparent reason why it would have done so, since Gibson seemingly sought special treatment with no basis in the collective-bargaining agreement. That Gibson reacted to the denial of his wage claim by engaging in misconduct by no means entails a causal connection between the two. Gibson himself chose that exaggerated response to Stillman's denial of his wage claim. Thus, there is no "inextricable" link between the denial of the wage claim and the discharge. The majority focuses on the wrong causal connection: the relevant inquiry is whether the Union's discipline will predictably have an adverse effect on Stillman's future exercise of 8(b)(1)(B) authority—e.g., the future denial of a wage claim. That the misconduct followed the denial of the wage claim is irrelevant to this analysis. Although Stillman might in the future hesitate to discharge an employee, he could not reasonably hesitate to deny a wage claim, for fear that by doing so he might provoke an employee to engage in dischargeable misconduct and thereby invite on himself union discipline. That connection is too attenuated.

Finally, the judge reasoned that Stillman's action toward Gibson involved his representation of the Employer's interests when Gibson's reaction proved disruptive. I agree—but this rationale implicates nothing more than the core role of a supervisor who has recommended the discharge of an employee for a performance-based reason. To hold otherwise is to resurrect the Board's old "reservoir doctrine," rejected by the Supreme Court in *Florida Power*, which reasoned that all supervisors are protected by Section 8(b)(1)(B), because they constitute a "reservoir" of potential employer representatives.

The point of Gibson's discharge was to remove an unproductive worker, not to vindicate the Employer's decision on a wage matter that was of no apparent interest to anyone but Gibson. The effort to describe the routine exercise of supervisory authority as something more illustrates my point here: that the majority's approach has no limiting principle. Provided a supervisor also has 8(b)(1)(B) responsibilities, there seems to be no way to distinguish between his discharge of those responsibilities and the performance of his ordinary supervisory duties. Every action of the supervisor can be formulated in terms of his 8(b)(1)(B) duties, immunizing him from union discipline. This truly is the "reservoir" doctrine.

I recognize that the discipline of Stillman was directed at the performance of his normal supervisory responsibilities. But this conflicting-loyalties dilemma, recognized by the Court in both Florida Power and *Royal Electric*, is inherent whenever a supervisor remains a union member. The Court made clear that Congress did not intend Section 8(b)(1)(B) to address this situation. As the Court in *Florida Power* underscored, an employer is "at liberty to demand absolute loyalty from his supervisory personnel by insisting . . . that they neither participate in, nor retain membership in, a labor organization." 417 U.S. at 812. See *Parker-Robb Chevrolet*, 262 NLRB 402 (1982) (noting that supervisors have not been covered by protections of the Act since 1947, when they were excluded from the definition of statutory employees).[3]

In his concurring opinion in *Royal Electric*, Justice Scalia described the Board's approach to Section 8(b)(1)(B) as a series of apparently reasonable steps leading to a result never contemplated by Congress. 481 U.S. at 598. The majority's decision unfortunately suggests that the Board has again traveled too far. Accordingly, I dissent.

Dated, Washington, D.C. November 22, 2002

Wilma B. Liebman, Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

[3] For the reasons stated, Sec. 8(b)(1)(B) is not implicated here. Nor would Sec. 8(b)(1)(A) apply, even if Stillman were a covered employee. The Respondent's discipline of Stillman clearly related to a legitimate union objective: preventing members from inflicting harm on fellow members by causing them to lose their jobs. See, e.g., *Communications Workers Local 5795 (Western Electric Co.)*, 192 NLRB 556, 557 (1971).

Choose not to engage in any of these protected activities.

WE WILL NOT file internal union charges against, levy fines against, or otherwise discipline Horace Stillman or any other representative of Thyssen General Elevator Company for actions taken while acting in the capacity of an 8(b)(1)(B) representative for the purpose of collective bargaining or adjustment of grievances.

WE WILL NOT in any like or related manner restrain or coerce Thyssen General Elevator Company in the selection of its 8(b)(1)(B) representative for the purpose of collective bargaining or adjustment of grievances.

WE WILL, within 14 days of the Board's Order, rescind the internal union charges and the fine levied against Horace Stillman, return to suspended status the $1400 fine against Stillman that had been unsuspended, remove all references to the charges and fine from our files, and within 3 days thereafter notify him and the Employer in writing that this has been done and that the charges and fine will not be used against him in any way.

WE WILL, within 14 days of the Board's Order, refund to Horace Stillman any of the fine levied against him that has been paid and WE WILL reimburse him for any expenses that he has incurred in defending against the charges, with interest.

LOCAL 10, INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS, AFL–CIO

John S. Ferrer, Esq., for the General Counsel.
Robert Matisoff, Esq. and *R. Richard Hopp, Esq.*, of Washington, D.C., for the Respondent.
Charles O. Strahley, Esq., of Teaneck, New Jersey, for the Charging Party.

DECISION

STATEMENT OF THE CASE

RICHARD A. SCULLY, Administrative Law Judge. Upon a charge filed on November 16, 1999, by the National Elevator Industry, Inc., the Regional Director for Region 5 of the National Labor Relations Board (the Board) issued a complaint on March 31, 2000, alleging that Local 10, International Union of Elevator Constructors (IUEC), AFL–CIO, had violated Section 8(b)(1)(B) of the National Labor Relations Act (the Act). The Respondent filed a timely answer denying that it had committed any violation of the Act.

A hearing was held in Washington, D.C., on August 22, 2000, at which all parties were given a full opportunity to examine and cross-examine witnesses and to present other evidence and argument. Briefs submitted on behalf of the General Counsel and the Respondent have been given due consideration. Upon the entire record, and from my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Employer in this matter, Thyssen General Elevator Company, is a Delaware corporation with an office and place of business in Linthicum, Maryland, engaged in the construction and maintenance of elevator systems for various customers, including the U.S. Veterans Administration (VA) in Wilkes-Barre, Pennsylvania. Annually, in conducting its business operations, Thyssen performs services valued in excess of $50,000 in States other than the Commonwealth of Pennsylvania. At all times material, Thyssen has been an employer-member of the Charging Party to which it has delegated authority to negotiate and administer collective-bargaining agreements with various labor organizations, including the Respondent. The Respondent admits, and I find, that at all time material Thyssen has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent admits, and I find, that all times material it has been a labor organization within the meaning of Section 2(5) of the Act with an office in Camp Springs, Maryland.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background Facts

Horace F. Stillman Jr., has been a member of the Respondent for over 30 years. He has been employed by Thyssen and its predecessor for about 16 years as a mechanic-in-charge (MIC), which is the equivalent of a foreman. He was assigned to work on a project involving the installation of six elevators in an addition being built at a VA hospital in Wilkes-Barre, Pennsylvania from January 11 to July 30, 1999.[1] The project was located within the geographic jurisdiction of IUEC Local 84. The terms of employment of elevator mechanics on the project were governed by the standard collective-bargaining agreement to which Thyssen and the Respondent were signatories (the standard agreement) and employees' expenses were covered by a local agreement with Local 84 (the local agreement). The general contractor on the project was Bell Construction.

Stillman was the subject of internal union disciplinary charges filed by Local 84 Business Representative August Whymeyer. Whymeyer accused Stillman of violating the IUEC constitution by "wronging another member" because he told a superior at Thyssen that employee Joe Gibson was "nothing but trouble" and sought to have him removed from the VA job. After Stillman expressed doubt that he would get a fair hearing before Local 84, the charges were referred by it to the executive board of Local 10, Stillman's home Local, which held a trial that Stillman attended on June 7. The trial board found that Stillman had violated the IUEC constitution, imposed a fine of $1900, and directed him to appear at its August meeting for a reprimand. It also lifted the suspension of the $1400 balance on another fine that had been imposed on Stillman following a May 4, 1998 trial on other charges against him. Stillman appealed to the IUEC general executive Board, which upheld the trial board's decision.

[1] All dates are in 1999, unless otherwise indicated.

B. Other Facts

The evidence shows that Stillman was an experienced foreman who was brought to the VA hospital project as the MIC to run a difficult job that was behind schedule. While there, he supervised a single shift with a crew of four to eight employees who usually worked in two-man teams consisting of a mechanic and a helper. Stillman was the only supervisor at the site on a daily basis. Ken Gough from the Employer's Baltimore office was the construction superintendent for the job and visited the jobsite one or two times a week for about 15 to 30 minutes at a time. Gough reported to Martin Walker, the construction manager who had asked Stillman to take over the MIC position on the project. Walker visited the jobsite every couple of months, spending from 1 to 2 hours there. Stillman also spoke by telephone with both Gough and Walker a couple of times a week.

Stillman made the daily job assignments for all Thyssen employees and changed their assignments if he found it necessary. He determined the number of employees needed on the job at a given time and recommended that the work force be increased or reduced accordingly. When he was not present at the worksite and the standard agreement required the presence of an MIC because of the number of employees working, he appointed an acting MIC to serve in his absence. Stillman was Thyssen's representative at the general contractor's weekly progress meetings and in dealing with the VA inspector assigned to oversee installation of the elevators. He was responsible for interpreting the sales contract and specifications, for seeing that they had all of the necessary equipment for installing the elevators, for laying out work, and for resolving problems arising with the other trades on the job.

Stillman credibly testified that when he arrived at the VA project there were problems with Thyssen's employees arriving late in the morning and taking more than the allotted time for lunch. He informed them that they had to be punctual and, if they were not, their paid time would start when they showed up. He also told them that they were entitled to no more than 30 minutes for lunch. The following week, Whymeyer came to the jobsite and expressed his disagreement with Stillman's position on these issues. After speaking with Stillman, Whymeyer talked to the employees, there were no further problems, and no grievances were filed. Stillman had authority to have employees work overtime and to grant them time off. He also worked out an arrangement whereby the employees agreed to forego the coffee breaks provided for in the standard agreement and to take no more than 30 minutes for lunch in return for receiving 2-1/2 hours off with pay each Friday.

Stillman was responsible for collecting the timesheets on which the employees recorded their hours and expenses each week. He reviewed them for accuracy and submitted them for Gough's approval. All of the timesheets he determined were accurate were paid accordingly. If he found any discrepancies, he went to the employees involved and attempted to resolve them. If no agreement was reached, he made a recommendation to Gough as to how it should be handled. He described an instance involving a mechanic, Glenn Elder, who submitted a claim for expenses under the local agreement that Stillman considered abnormally high. When Elder refused to change the expense claim, Stillman recommended to Gough that the additional expenses not be paid and his recommendation was followed. In another instance, helper David Luethe made a claim for cartage expenses (for carrying company supplies in his personal vehicle) that Stillman considered too high. Stillman talked to Luethe about it and he agreed to accept the lesser amount. Stillman testified that he had authority to give employees verbal discipline and to recommend their promotion or removal from the project. He recommended to Gough that Elder and mechanic Hugh Herb be removed from the VA job because their work was unsatisfactory and that helper Charles Majaika be elevated to temporary mechanic status while on the VA project. His recommendations were followed.

In February or March, mechanic Joe Gibson came to work at the VA job. Gibson had previously been working for Thyssen at a jobsite in Connecticut. Within a day or two, Stillman discovered that Gibson was claiming an hourly rate that was considerably higher than was paid in the Local 84 area. When Stillman questioned him about it, Gibson said that he had been promised the higher rate. Stillman told him that he would receive the Local 84 wage rate and that he could either take it or leave the job. When Gibson refused to change the wage rate he was claiming on his timesheet, Stillman spoke with Gough and recommended that he be paid at the Local 84 rate. His recommendation was followed and Gibson was paid at the lower rate.

Stillman testified that he had to consult the standard agreement in the course of his duties and described an instance in March or April in which a question arose over the use of a forklift to unload a truck. Stillman called Whymeyer to confirm that the standard agreement permitted the use of the forklift under the circumstances and they agreed that it did. Around the same time period Whymeyer told Stillman that he was guilty of safety violations and would be brought up on charges. He complained that an elevator "run button," a device used to operate the elevator during construction, did not have a stop switch and that Stillman had improperly loaded the weight-frame that balances the elevator car. It does not appear that any grievances were filed in connection with Whymeyer's allegations, but he repeated those allegations during Stillman's union trial.

Stillman testified that after Gibson was denied the higher wage rate he had claimed, he continued to claim it and constantly complained about that fact that his claim had been denied. Stillman observed that Gibson's pace of work was slower than that of other employees performing the same tasks and on one occasion found him picking up his tools 45 minutes before the scheduled end of the shift. A helper who was assigned to work with Gibson complained that every time Stillman left their area Gibson would stop work and complain to other employees about his not getting the higher wage rate to which he felt entitled. Stillman spoke to Gibson about his wage rate and about his pace of work, but it did not improve. As a result, Stillman spoke with Gough, telling him that Gibson "was nothing but trouble" and recommending that he be taken off the VA project. Gibson was removed from the project after only 2 weeks. At about the same time, Stillman encountered Whymeyer on the jobsite and informed him that he had recommended that Gibson be removed and asked his approval to have

Majaika made a temporary mechanic. Once Gibson was removed from the project, Whymeyer filed the charges against Stillman. As noted above, after an internal union trial, Stillman was found guilty of the charge and was fined $1900.

C. Contentions of the Parties

Section 8(b)(1)(B) of the Act makes it unlawful for a labor organization to restrain or coerce an employer in the selection of its "representatives for the purposes of collective bargaining or the adjustment of grievances." The complaint alleges that Stillman was a supervisor and an 8(b)(1)(B) representative of Thyssen and that the Respondent violated the Act by fining him because of his performance of certain supervisory and/or management functions. The Respondent contends that Stillman was not an 8(b)(1)(B) representative, that he was not disciplined for the exercise of 8(b)(1)(B) duties, and there is no evidence that the disciplinary action against Stillman has adversely affected his future performance of such duties on behalf of the employer.

D. Analysis and Conclusions

There can be little doubt but that Stillman was a supervisor within the meaning of Section 2(11) of the Act while he was employed as MIC on the VA project and I so find. The evidence establishes that although Stillman regularly did bargaining unit work on the VA project, he was the only representative acting in the interest of Thyssen on the project on a day-to-day basis and that he continually used independent judgment in assigning and responsibly directing the activities of its work force on the project. He had authority to issue verbal discipline and the responsibility to verify and approve employees' timesheets and claims for expenses. He also effectively recommended to the Employer the addition and reduction of the number of workers on the project as the work progressed as well as the removal from the project of specific employees whose work he found inadequate and the promotion of another from helper to mechanic. The Respondent contends that whether or not Stillman was a statutory supervisor is irrelevant. While it is not determinative on the issue of 8(b)(1)(B) status, it is obviously a factor that must be considered.

In *NLRB v. Electrical Workers IBEW Local* 340,[2] the Supreme Court rejected the "reservoir doctrine"—that all statutory supervisors constitute a reservoir of potential collective-bargaining agents or grievance adjusters—and held that the mere fact that the subject of internal union discipline is a supervisor does not necessarily subject his employer to 8(b)(1)(B) restraint or coercion. Discipline of a supervisor-member is prohibited by Section 8(b)(1)(B) only when that member actually performs 8(b)(1)(B) activities such as collective bargaining, grievance adjustment, or some other closely related activity (e.g., contract interpretation). If the supervisor plays no part in those processes, union discipline cannot have a contemporaneous effect on the employer's rights protected by Section 8(b)(1)(B). Consequently, it must be determined whether Stillman possessed and exercised the kinds of authority specified in Section 8(b)(1)(B). *Sheet Metal Workers Local 68 (DeMoss Co.)*, 298 NLRB 1000, 1003 (1990).

There is no evidence that Stillman ever served as a representative of the Employer in collective-bargaining negotiations and he testified that he had no role in negotiating the standard agreement or the local agreement. However, there is substantial evidence that he was regularly engaged in grievance adjustment and contract interpretation. It is true that Stillman was not designated by Thyssen as its representative to respond to grievances at the oral step of the grievance procedure, as provided for in article 15, paragraph 2, of the standard agreement. However, he need not have been involved in the formal contractual grievance procedure in order to have served as a grievance adjuster. *Elevator Constructors Local 36 (Montgomery Elevator)*, 305 NLRB 53, 55 (1991); *Steelworkers Local 1013 (USX Corp.)*, 301 NLRB 1207, 1210 (1991); and *Sheet Metal Workers Local 68 (DeMoss)*, supra at 1003.

The evidence establishes that while acting on behalf of the Employer on a day-to-day basis, Stillman dealt with, and in many cases resolved, a number of problems and complaints raised by the employees and/or their union representative, including, wage rates, expenses, work hours, length of breaks and lunch periods, poor work performance, and safety issues. All of these matters were directly related to the standard agreement and/or the local agreement governing the terms of employment of Thyssen employees on the VA project. Immediately after his arrival at the VA project, which was behind schedule, Stillman addressed problems concerning the employees' lack of punctuality in beginning their workday and taking 40 to 60 minutes for their lunch breaks. He made it clear that they had to begin work on time and could take only 30 minutes for lunch. This resulted in Whymeyer coming to the jobsite to object, but he apparently accepted Stillman's decisions as no grievances were filed. It was Stillman who worked out the arrangement whereby Thyssen employees got 2-1/2 hours off with pay each Friday in return for giving up their coffee breaks as a means of expediting work on the project. Stillman also dealt with Whymeyer about the latter's safety complaints and concerning the use of a forklift. His resolution of disputes over wage rates and expenses necessarily involved interpretation of the pertinent contract provisions. The fact the Stillman resolved these incipient grievances at a fairly low level—before they became either memorable or subject to the formalities of the formal grievance procedure—does not mean that he was not resolving grievances within the meaning of Section 8(b)(1)(B). *Sheet Metal Workers Local 68 (DeMoss)*, supra at 1003.

The Respondent contends that Stillman was not a grievance adjuster because he did no more than resolve "routine" complaints about work assignments and "coffee break" complaints which did not rise to the level of grievance adjustment within the meaning of §8(b)(1)(B), citing the Board's decision *Longshoremen ILA* (*Marine Transport)*, 301 NLRB 527, 528 (1991). There, the Board held that second and third mates aboard vessels did no more than resolve routine supervisory problems. It noted, however, that there was generally always a master or chief mate aboard the vessel to adjust grievances and, distinguishing *Operating Engineers Local 101 (St. Louis Bridge*), 297 NLRB 485 (1989), it pointed out that the disputes the sec-

[2] 481 U.S. 573 (1987).

ond and third mates resolved did not involve employees' wages and hours. Here, Stillman was generally the only representative of the Employer on the project on a daily basis and he did resolve problems involving employees' wages, expenses, and hours of work, to an even greater extent than the MIC involved in *Elevator Constructors Local 36 (Montgomery Elevator)*, supra, whom the Board found to be an employer representative within the meaning of Section 8(b)(1)(B).[3] Consequently, I find that at all times material Stillman was an 8(b)(1)(B) representative of Thyssen.

The Respondent also contends that the charges filed against Stillman do not relate to contract interpretation and/or grievance adjustment on his part. I do not agree. There can be little doubt but that the actions which led to the charges against Stillman were directly related to the exercise of his 8(b)(1)(B) duties on behalf of the Employer. Stillman first determined that Gibson was not entitled to the wage rate he was claiming under a provision of the standard agreement and recommended that he not be paid at that rate. After the Employer followed that recommendation, Gibson constantly complained about his wage rate to the extent that he was disruptive and his low production was adversely affecting work on the project. When Stillman's efforts to get Gibson to stop complaining and do his work proved unsuccessful, he told his superior that Gibson was "nothing but trouble," and recommended that Gibson be removed from the project and that he be replaced by elevating one of the helpers to the position of temporary mechanic. After Stillman told Whymeyer that he had done this, the charges were filed against him. Stillman's actions vis-à-vis Gibson, which led to the charges against him, involved contract interpretation, his disposition of Gibson's informal grievance claim concerning his wage rate, and his representation of the Employer's interests when Gibson's adverse reaction to the action on his grievance proved disruptive. Consequently, I find that the union charges and disciplinary action against Stillman arose from and were inextricably intertwined with his actions while acting as an 8(b)(1)(B) representative of the Employer.

The remaining question is whether under the circumstances presented here the disciplinary action the Respondent took against Stillman restrained or coerced the Employer in the selection of its 8(b)(1)(B) representatives. The Respondent argues that there was no evidence presented to establish that the disciplinary action it took against Stillman affected his 8(b)(1)(B) duties. The Board has always applied an objective standard in determining the coercive effect of unlawful actions. Applying an objective standard here, I find that imposing a substantial fine on a supervisor-member for actions taken in the course of his supervisory and 8(b)(1)(B) responsibilities were designed to and were likely to compel him to abide by the Union's interpretation of the applicable labor agreements and to accept its position with respect to grievances. This deprived the Employer of uncoerced representation of its interests in dealing with the union representing it employees and violated Section 8(b)(1)(B). *Elevator Constructors Local 36 (Montgomery Elevator)*, supra; *Steelworkers Local 1013 (USX Corp.)*, supra; and *Sheet Metal Workers Local 68 (DeMoss)*, supra.

[3] The Respondent's contention that *Montgomery Elevator*, supra, was wrongly decided is not persuasive. Nor is its argument that the administrative law judge's decision in *Elevator Constructors Local 5 (Montgomery Kone, Inc.)*, JD–113–96, which held that the MIC in that case was not an 8(b)(1)(B) representative, was correct and should be followed. No exceptions were filed with the Board in that case and it has no precedential value. See *Watsonville Register-Pajaronian*, 327 NLRB 957. 959 fn. 4 (1999); *Colgate-Palmolive Co.*, 323 NLRB 515, 515 fn. 1 (1997).

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent violated Section 8(b)(1)(B) of the Act by filing charges against and fining the Employer's representative for actions taken in connection with contract interpretation and grievance adjustment, I shall recommend that it be ordered to refund any moneys Horace Stillman may have paid as a result of the unlawful fine as well as any out-of-pocket expenses he may have incurred in defending against the internal union charges, plus interest computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent argues that Stillman is not a party to this proceeding and is not entitled to a "make whole" remedy because none of his rights were alleged to have been violated, only those of the Employer. I do not agree. The means of coercion employed here was to penalize Stillman for his actions while serving as the Employer's 8(b)(1)(B) representative in order to compel him to favor the union's position in such matters. If that penalty is not fully removed by restoring Stillman to the status quo ante, the coercion remains. As long as Stillman remains under coercion, the Employer is being restrained in its choice of its 8(b)(1)(B) representative. Accordingly, in order to fully remedy the violation of the Employer's rights found herein, Stillman must be made whole. This includes refunding any part of the fine that he may have paid and reimbursing him for any expenses incurred in defending against the unlawful charges. See *Elevator Constructors Local 36 (Montgomery Elevator)*, supra at 57; and *Electrical Workers IBEW Local 113 (Pride Electric)*, 283 NLRB 39, 42 (1987).

CONCLUSIONS OF LAW

1. Thyssen General Elevator Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 10, International Union of Elevator Constructors, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. Horace Stillman was, at all times material, a supervisor within the meaning of Section 2(11) of the Act and a representative of Thyssen General Elevator Company within the meaning of Section 8(b)(1)(B) of the Act.

4. By filing charges and levying a fine against Horace Stillman for actions taken while acting in his capacity as an 8(b)(1)(B) representative of the Employer, the Respondent has coerced and restrained the Employer in the selection of its representatives for the purpose of adjustment of grievances in violation of Section 8(b)(1)(B) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, Local 10, International Union of Elevator Constructors, AFL–CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Filing internal union charges against, fining, or otherwise disciplining Horace Stillman or any other representative of the Employer for actions taken while acting in the capacity of an 8(b)(1)(B) representative of the Employer.

(b) In any like or related manner restraining or coercing the Employer in the selection of its representatives for the purpose of collective bargaining or adjustment of grievances.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days of this Order, rescind the internal union charges and the fine levied against Horace Stillman, remove all references to the charges and fine from its files, and within 3 days thereafter notify him and the Employer in writing that this has been done and that the charges and fine will not be used against him in any way.

(b) If any part of the fine levied against Horace Stillman has been paid, within 14 days refund to him the entire amount paid and reimburse him for any expenses he has incurred in defending against these charges, with interest as set forth in the remedy section of this decision.

(c) Within 14 days after service by the Region, post at its union office in Camp Springs, Maryland, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Sign and return to the Regional Director sufficient copies of the notice for posting by Thyssen General Elevator Company, if willing, at all places where notices to employees are customarily posted.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 20, 2000

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT file internal union charges against, levy fines against, or otherwise discipline Horace Stillman or any other representative of Thyssen General Elevator Company for actions taken while acting in the capacity of an 8(b)(1)(B) representative for the purpose of collective bargaining or adjustment of grievances.

WE WILL NOT in any like or related manner restrain or coerce Thyssen General Elevator Company in the selection of its 8(b)(1)(B) representatives for the purpose of collective bargaining or adjustment of grievances.

WE WILL, within 14 days of the Board's Order, rescind the internal union charges and the fine levied against Horace Stillman, remove all references to the charges and fine from our files, and within 3 days thereafter notify him and the Employer in writing that this has been done and that the charges and fine will not be used against him in any way.

WE WILL, within 14 days of the Board's Order, refund to Horace Stillman any of the fine levied against him that has been paid and WE WILL reimburse him for any expenses he has incurred in defending against the charges, with interest.

LOCAL 10, INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS, AFL–CIO

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."